

No. 6960

IN THE
United States Circuit Court of Appeals
For the Ninth Circuit 20

LOUIS E. GOODMAN,

Appellant,

VS.

E. C. STREET, as Trustee in Bankruptcy
of the Estate of HENRY DUFFY PLAYERS
(a corporation), Bankrupt,

Appellee.

REPLY BRIEF FOR APPELLANT.

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May it please the Court:

Two of the authorities cited by counsel for the appellee, at the bottom of page 3 of his brief,

Remington, Bankruptcy, § 3669;

In re American Range and Foundry Co., 41
Fed. (2d) 845,

have no bearing on the question at bar, because they relate to a review pursuant to the mode prescribed by General Order No. 27. The remainder of the citations on pages 2, 3 and 4 are

In re De Ran, 260 Fed. 732, 740;

In re Cintron, 2 A. B. R. (N. S.) 369;

Collier, Bankruptcy, 13th ed. [page] 1358;

Remington, Bankruptcy, § 3649.

Examination of the quoted text of *Collier* discloses that he cites only *In re De Ran*, supra; and examination of the quoted text of *Remington* discloses that he cites only *In re Cintron*, supra.

We therefore turn to those cases:

In the case of *In re Cintron*, supra, there was a petition for review, fully complying with the mode prescribed by General Order No. 27. The only question was whether the right of review had been waived under a standing rule of the trial Court, which required the petition for review to be filed "within twenty days of the decision complained of, or it shall be considered waived." The decision had been made in an *ex parte* proceeding, of which the complaining party had no knowledge, and it was held that the twenty days did not start running until knowledge.

Turning to the case of *In re De Ran*, supra, we find a number of grounds of distinction:

First, General Order No. 27 relates solely and only to the mode of review "by the judge of any order made by the referee;" and the order under review in the *De Ran* case was an order of the judge. Note particularly the lower half of page 737 of 260 Fed., where the Court mentions the local practice relating to applications for allowance of attorney's fees, whereunder the order of allowance or disallowance was an order of the judge. No question under General Order No. 27 was presented in *In re De Ran*, supra.

Second, not only was the review by the judge of an order by the judge, but it was not, strictly speaking, a "review" in the sense of that term as used in Gen-

eral Order No. 27. It was "a formal investigation into the administration of the bankrupt's estate," resulting in findings of the attorney's guilt of actual *fraud*. The case supports, and properly supports, the power of a Court to discipline or disbar an attorney for official *misconduct*, which power is wholly separate and apart from power under General Order No. 27. At bar, the record presents simply the matter of a referee's order of allowance of fees to an honorable attorney.

Third, the judge did not act *sua sponte* in *In re De Ran*, supra, but brought the attorney in on an order to show cause (260 Fed., at 734), and appointed a committee to prosecute the proceeding as a disbarment proceeding. See *In re Ewell*, 37 F. (2d) 289 (C. C. A. 9).

Turning to the remainder of the brief for the appellee, at his pages 4 and 5: *First*, we call attention to Equity Rule 77, which provides that the agreed statement "shall be treated as superseding, for the purposes of the appeal, all parts of the record other than the decree from which the appeal is taken." *Second*, if the Court looks beyond the agreed statement, then we ask that the statements on appellee's page 4 be amplified by adding the following quotation from page 2 of "Petition for Allowance of Appeal":

"On the 30th day of July, 1930, said receiver in bankruptcy filed in said bankruptcy proceeding his first and final account and thereafter the said account upon notice duly given as provided by law, was heard by said referee; litigation arose with respect thereto and with respect to the

proper allocation of funds in the estate among creditors of the receiver and the referee in bankruptcy made an order allowing said account and settling the questions of priority between creditors and such order was reviewed by the District Judge and by him affirmed and such litigation ended there.”

And also by adding the following quotation from page 4 of said petition for allowance of appeal:

“That said petitioner Louis E. Goodman acted as such counsel for the receiver from May 17, 1930, all matters pertaining to the receiver’s account were fully determined.”

Dated, San Francisco,
April 12, 1933.

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